

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

KEN-CREST SERVICES

Employer

and

Case 4-RC-19759

PENNSYLVANIA SOCIAL SERVICES UNION,
LOCAL 668 OF SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO-CLC¹

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

¹

The name of the Petitioner appears as amended at the hearing.

5. The Employer provides social services to adults with developmental disabilities at approximately 62 group homes located throughout Southeastern Pennsylvania and Delaware. The Employer's administrative offices are located in Plymouth Meeting, Pennsylvania. The Employer's 35 group homes located in Chester, Montgomery and Berks Counties, Pennsylvania, constitute its Pennsylvania Suburban Residential Division of Adult Services (the Suburban Division). The Petitioner seeks to represent a unit of approximately 144 full-time and regular part-time employees employed in the Suburban Division, including Resident Advisors, Program Managers and Assistant Program Managers. The parties agree as to the appropriateness of the petitioned-for unit but disagree with respect to the unit placement of the Program Managers. The Employer would exclude Program Managers from the unit as supervisors within the meaning of Section 2(11) of the Act. The Employer employs approximately 110 Resident Advisors, 33 Program Managers,² and one Assistant Program Manager³ in the Suburban Division.

Michael Walker, the Employer's Director of Day to Day Operations for Southeastern Pennsylvania, oversees the Suburban Division. The Employer employs two Community Living Directors in the Suburban Division who report to Walker. At full staffing levels, there are eight Project Directors who report to the Community Living Directors.⁴ Each Project Director is responsible for several group homes. They visit each of their group homes from one to three times per week, and stay at each home for at least an hour on each visit.

The group homes in the Suburban Division are staffed by a Program Manager and between two to five Resident Advisors. The group homes are generally staffed 24 hours per day, seven days per week. Although there are some differences in the way homes are operated based on the needs of the residents, their general operations are fairly uniform. Program Managers and Resident Advisors assist the developmentally disabled residents with basic adaptive living skills such as eating, dressing and hygiene. They also transport residents to and from their day programs and doctors' appointments, perform housekeeping duties, go shopping for residents, attend meeting and take residents on social outings.

Government regulations and internal company policies, such as the Employer's Residential Program Manual, describe the care to be provided to the residents. In addition, an Individual Program Plan is developed annually for each resident by a treatment team. The treatment team is headed by a Project Director and can include the

² Two Program Manager positions were vacant at the time of the hearing herein.

³ The Employer no longer appoints employees to the position of Assistant Program Manager. No party contends that the Assistant Program Manager is a supervisor within the meaning of the Act.

⁴ At the time of the hearing, the Employer employed six Project Directors.

Program Manager, Resident Advisors, behavior specialists, the resident's family members and a case manager employed by the county. Either the Program Director or the Program Manager may write the plan, but only the Project Director or another member of the team with the required degree, may sign it.⁵ According to Operations Director Walker, Program Managers do not have the requisite degree to sign the plans.⁶ The Manual and the individual treatment plans are maintained in the group homes so that they are accessible to Program Managers and Resident Advisors.

Program Managers and Resident Advisors are paid hourly and receive overtime for any hours worked over 40 per week. The starting rate for Program Managers is \$9.13 per hour, while Resident Advisors start at \$7.50 per hour. Each position receives a two-percent increase each year. As a result, there are certain Resident Advisors who receive a higher hourly rate than Program Managers with less seniority. The highest paid Program Managers currently earn \$15.60 per hour, while the highest paid Resident Advisors earn \$14.35 per hour. Program Managers and Resident Advisors receive the same benefits except Program Managers earn fifteen days of vacation, while Resident Advisors earn ten days. Both positions accrue an additional day for each year of seniority up to 22 days per year.

Resident Advisors are recruited, interviewed and put on the payroll by the Employer's Human Resources Department. After a Resident Advisor is hired, he or she is assigned to a group home. The Program Manager in the group home where the Resident Advisor is assigned sees to it that the new employee receives the required orientation and training. Both Program Managers and Resident Advisors participate in that training. The Employer provides a checklist of orientation and training items and either the Program Manager or the Project Director signs the form to certify that the new employee received the required orientation and training.

In July 1999, the Employer distributed a newly developed "Applicant Evaluation Form" for Program Managers to complete after a three-day "trial period." The form states

The purpose of the three day trial period is to both provide the Pre-Service training required by licensing, and to evaluate the applicant. During the trial days, the program manager should observe the applicant to determine whether he/she is an appropriate candidate for the program. The applicant should also be evaluating the job, and making a decision about whether or not to accept a position if it is offered.

⁵ The record evidence does not indicate the nature of the required degree.

⁶ Although Project Director Cindy Ryder testified that Program Managers could sign the plans if they had the required degree, she agreed that none of the Program Managers that she supervises have the degree.

The form provides for an “evaluation” on four points: attendance/punctuality, interactions with individuals, following directions, and interactions with staff and/or supervisor. The Program Manager then checks off one of four options for the employee: whether the applicant should be hired, should be placed in a different social service program, should not be hired or that the applicant declined the position. Four of the forms have been completed since they were distributed in July. None of the forms were returned with a recommendation to place the applicant in a different program or recommending that the applicant not be hired. Operations Director Walker testified that Program Managers had the authority to make these recommendations even before the form was developed and that Program Managers have “rejected” employees. However, there is no specific evidence about how that came about, or about the authority Program Managers had prior to July 1999.

Program Managers are supposed to prepare written evaluations for Resident Advisors in their group homes after they have been employed for three months and thereafter on an annual basis. However, in practice, Program Managers do not always prepare these evaluations. When they do, the evaluations usually go directly into the employee’s personnel file. A group home’s Project Director will review evaluations only if the Resident Advisor requests it. The three-month evaluations coincide with the end of a new employee’s probationary period. Program Managers have recommended that the probationary period of Resident Advisors be extended and extensions have been granted. However, there is no evidence of any consequences that flow from being placed on an extended probationary period. It is also not clear what happens in the event a Resident Advisor fails to complete his or her probationary period satisfactorily. Project Director Cindy Ryder testified that the Program Manager and the Project Director will speak to the Human Resources Coordinator to obtain her “guidance” about what to do, but she did not testify what options the Human Resources Coordinator has. Annual evaluations do not have an impact on employee wage rates, as the Employer does not grant merit pay increases. Project Directors may look at evaluations when considering whether to promote a Resident Advisor to Program Manager. This would, however, be only one of many factors that the Project Director will consider. In selecting new Program Managers, Project Directors review a Resident Advisor’s résumé and his or her entire personnel file. They also consider their own impressions of the applicant by personally interviewing the employee and personally observing the employee at work.

Dale Beck, the Employer’s Director of Resource Management, negotiates contracts with the county governments that provide funding for the Employer to run its group homes. After funding has been secured, Beck establishes a budget for each group home. The budget for each group home reflects Beck’s projection of the costs of the various items that go into operating a group home. Among other items, the budget sets forth number of employees who are expected to provide coverage and the total number of weekly authorized hours. As part of the process of establishing a group home’s annual budget, Beck conducts a budget review meeting with the Program Manager from the group home and sometimes with its Project Director or Community Living Director. In these meeting, Dale Beck reviews with the Program Manager how well they are keeping to the current budget. The Program Managers may use this as an opportunity to suggest

changes in their home's budget. If Beck agrees with a suggestion, he forwards the change to Bob Powell, the Employer's Adult Services Fiscal Director, who incorporates the change into the group home's budget for the following year. Project Director Cindy Ryder testified that Program Manager Shawn Pearson rejected having extra staff assigned to his group home and that, as the Project Director, she did not have to approve the decision. She later clarified her testimony to explain that if upper management did not agree that the current staff could provide adequate coverage they would not have accepted Pearson's recommendation. Similarly, Program Manager Dawn Grunder described that her group home avoided having an additional employee added only after the staff convinced upper management that the extra help was not needed.

Program Managers are responsible for establishing written work schedules for their respective group homes. They may be prepared either on a weekly, biweekly or monthly basis. Program Managers and Resident Advisors are often scheduled to work in the group homes alone. Although the budget sets forth the number of hours to be worked at each group home, the Program Manager is ultimately guided by his or her responsibility to provide coverage mandated by the law and the needs of the residents. After the schedules are prepared, a copy is forwarded to the Project Director, who also shares in the responsibility of providing required staffing and may change the schedule. Program Manager Sandy Millard testified that on one occasion her Project Director instructed her not to schedule a Resident Advisor for certain hours and on another occasion she was instructed to change her own schedule. There are times when the Program Manager does not fill all the scheduled shifts for the group home. Resident Advisors volunteer to cover shifts that have not been scheduled and will exchange shifts between themselves to accommodate each other. Also, last minute assignments may be necessary if, for example, a resident is sick and cannot go to his or her day program, requiring the presence of another employee at the home, or if an employee is sick and cannot report to work. Coverage for the home in these circumstances is accomplished through the cooperation of the employees. The Program Manager will discuss the situation with Resident Advisors and solicit and obtain volunteers to get the necessary coverage. By authorizing extra hours to provide necessary coverage, the Program Manager in effect may be authorizing overtime. The Program Manager also has the option of contacting the home's Project Director, who can secure a replacement from another home. Unless and until relief arrives at the home, the Program Manager or Resident Advisor who is already on duty knows that they are not free to leave. Although Operations Director Walker testified that a Program Manager may require a Resident Advisor to work overtime, he stated that the Program Manager will "ask" the Resident Advisor to work additional hours. There is no evidence in the record that Resident Advisors have ever been compelled to work overtime. Program Manager Dawn Grunder testified she cannot require a Resident Advisor to cover for another employee.

Program Managers complete weekly hour sheets, which explain the reasons for overtime during the previous two-week pay period, and forwards them to the Project Director. If Operations Director Walker concludes that a group home has logged excessive hours, he will speak to the Community Living Director, who, in turn, speaks to

the Project Director. Thereafter, the Project Director meets with the Program Manager to determine whether the Program Manager needs help in scheduling.

The Project Directors and Community Living Directors serve as on-call supervisors and Operations Director Walker serves as their back up. Depending on the nature of the problem, Resident Advisors and Program Managers may be required to contact the supervisor on call. When Resident Advisors either cannot report to work or wish to leave work early because they are ill, they are supposed to telephone the group home and speak to the Program Manager. During office hours, if the Program Manager is not at the home, the Resident Advisor is to contact their Project Director or, if unavailable, a Community Living Director or the Operations Director. After office hours, the Resident Advisor is to contact the Project Director, who unlike the Program Manager, can require a Resident Advisor from another home to serve as a replacement. In doing so, Project Directors consult the schedules that Program Managers drafted to determine which Resident Advisors might be available to fill in.

A Resident Advisor may request a transfer from his or her assigned home to another by completing a written request. To obtain the transfer, the Program Managers in both homes must approve the request. The Project Director is generally not involved in transfers unless the transfer would result in a staffing imbalance. There is evidence of only one voluntary transfer in the record. Project Directors can involuntarily transfer a Resident Advisor to a new group home. Program Managers do not have this authority.

Resident Advisors request vacations by filing a form with their Program Manager, who routinely grants such requests unless doing so would leave the home short-staffed. Their decisions are subject to review at the Employer's headquarters, where personnel files are maintained and where a member of the Employer's personnel staff may confirm that the employee has sufficient accrued vacation time to cover the request. A Program Manager's decision is subject to further review for conformity with the Employer's policies. Thus, when Program Manager Ed Mulready approved a Resident Advisor's request for pay in lieu of vacation, and Program Manager Cindy Noble approved a Resident Advisor's request for four consecutive weeks of leave, their approvals were reversed on the ground that they were contrary to the Employer's policy.

Program Managers and Resident Advisors must contact the home's Project Director or on-call supervisor whenever issues arise which are out of the ordinary, including any situation involving the police department, fire department or an ambulance service. In these instances, whoever makes the call must file with the Project Director an "Unusual Incident Report."

Program Managers sign their own time cards. They also sign off on Resident Advisors' time cards, even though they were not necessarily present when the Resident Advisor worked and thus cannot personally verify their accuracy. Each home's time cards are forwarded by the Program Manager to the Employer's payroll department in its Plymouth Meeting administrative offices.

The Employer has a progressive disciplinary system. The discipline system commences with general counseling⁷ and progresses through verbal warnings, written warnings, suspensions with or without pay and ends with discharge. Program Managers are authorized to give general counselings and verbal warnings to Resident Advisors. In the case of both general counselings and verbal warnings, the Program Manager speaks to the Resident Advisor about the deficiency that has been identified and then writes a note memorializing the incident. There is no form for the Program Manager to fill out. In the case of verbal warnings, the notes are maintained in the employee's personnel file in the Employer's Plymouth Meeting administrative offices. Those files show that only one Program Manager has issued verbal warnings in the two years prior to the hearing. Verbal warnings have no impact on an employee's wages or continued employment, nor do they necessarily dictate what discipline will follow in the event of future misconduct. There is no formal policy concerning how many verbal warnings will warrant issuance of a written warning. Written warnings can only be issued with the explicit approval and signature of a Project Director or higher authority. Three written warnings within a year will result in an employee's discharge. With respect to discipline above the level of verbal warnings, Program Manager Sandy Millard testified that on two occasions she recommended that employees be transferred because of unsatisfactory performance. In neither case was her recommendation implemented. Similarly, Program Manager Donald Hmble testified that he recommended that a Resident Advisor be discharged, but that his Community Living Director disagreed and gave the employee another chance. Program Manager Melanie Reed testified that she issued verbal warnings to an individual who was then a Resident Advisor. Later, Reed recommended to her Project Director that the individual be removed from the program. Although the Project Director and Operations Director Walker decided to issue a written warning, the individual remained in Reed's group home over her objection. At the time of the hearing, the individual was employed as a Program Manager at another group home.

Program Managers, Project Directors and Community Living Directors attend Suburban residential management meetings. Nursing personnel or the Operations Director sometimes join them. In these meetings, upper management briefs the Program Managers on the Employer's policies and procedures. There are other meetings called management team meetings to which the Program Managers are not invited to attend. Finally, there are direct care management meetings held the first Monday of each month which are attended only by Program Managers. At these meetings, the Program Managers discuss their concerns among themselves and in some cases pass them along in writing either to a Community Living Director or the Operations Director.

The Program Manager and the Resident Advisors act as a team whose goal is to better the lives of the residents who live in their group home. Most of a Program Manager's time, like that of a Resident Advisor, is spent providing direct care to the residents. The specific duties of the Program Manager or Resident Advisor are dictated

⁷ The Employer's progressive discipline system is found in its Policy and Procedures Manual. In its written form there is no mention of general counseling.

by the needs of the residents. Project Directors meet with Program Managers to review what needs to be done. The Program Managers, in turn, will instruct or remind the Resident Advisors concerning what they are to do. Different Program Managers use different means to accomplish this. Some have staff meetings, while others speak to Resident Advisors individually or leave notes around the home or in a logbook. Resident Advisors who are going off duty will also leave notes for the employees who are coming on duty reminding them of what needs to be done in the upcoming shift. The Employer's nursing staff has established a "tickler" system in all of the group homes to remind the staff of the residents' various doctors' appointments. However, for the most part, there is no Program Manager present when Resident Advisors work and Program Managers do not provide detailed instructions to Resident Advisors as to how to perform their jobs. Occasionally, Program Managers will tell Resident Advisors to do some incidental tasks, such as conduct a fire drill, or may give Resident Advisors instructions such as reducing expenditures on groceries by buying less expensive items.

Program Managers and Resident Advisors daily chart each resident's progress in achieving the goals set in their Individual Program Plans in a program book. The Program Managers prepare monthly and quarterly reports for each resident that summarize the information recorded in the program books. Program Managers also must keep records to account for petty cash.

The Employer's policy concerning grievances between Resident Advisors is that they should try to work it out among themselves. If they are unable to resolve the issue they may bring it to the Program Manager's attention. However, any grievance that an employee puts into writing is referred to the Operations Director or his designee, who conducts an investigation.

A finding of supervisory status is warranted only where the individuals in question possess one or more of the indicia set forth in Section 2(11) of the Act. *Providence Hospital*, 320 NLRB 717, 725 (1996), *enfd.* 121 F.3d 548, 156 LRRM 2001 (9th Cir. 1997); *The Door*, 297 NLRB 601 (1990); *Phelps Community Medical Center*, 295 NLRB 486, 489 (1989). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Providence Hospital*, *supra*, 320 NLRB at 725; *Juniper Indus.*, 311 NLRB 109, 110 (1993). The statutory definition specifically indicates that it applies only to individuals who exercise independent judgment in the performance of supervisory functions and who act in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 574, 146 LRRM 2321, 2322 (1994); *Clark Machine Corp.*, 308 NLRB 555 (1992). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. *Providence Hospital*, *supra*, 320 NLRB at 725. The exercise of some supervisory authority in a merely routine, clerical or perfunctory manner does not confer supervisory status on an employee. *Id.*; *Juniper Indus.*, *supra*, 311 NLRB at 110. The authority effectively to recommend "generally means that the recommended action is taken with *no* independent investigation by superiors, not simply that the

recommendation is ultimately followed.” *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982) (emphasis in original). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Robert Greenspan, DDS*, 318 NLRB 70 (1995), enfd. mem. 101 F.3d 107, 153 LRRM 2704 (2nd Cir. 1996), cert. denied 117 S.Ct. 68, 153 LRRM 2736 (1996), citing *NLRB v. Lindsay Newspapers*, 315 F.2d 709, 712 (5th Cir. 1963); *Gaines Electric*, 309 NLRB 1077, 1078 (1992); *Ohio River Co.*, 303 NLRB 696, 714 (1991), enfd. 961 F.2d 1578, 140 LRRM 2120 (6th Cir. 1992). Job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight. The Board insists on evidence supporting a finding of actual as opposed to mere paper authority. *East Village Nursing Center v. NLRB*, 165 F.3d 960, 160 LRRM 2342, 2345–2346 (D.C. Cir. 1999); *Store Employees Local 347 v. NLRB*, 422 F.2d 685, 71 LRRM 2397, 2399–2400 (D.C. Cir. 1969); *NLRB v. Security Guard Services*, 384 F.2d 143, 66 LRRM 2247–2250 (5th Cir. 1967), enfg. 154 NLRB 8 (1965); *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976).

The burden of establishing supervisory status is on the party asserting that such status exists. *Bennett Indus.*, 313 NLRB 1363 (1994); see also *St. Francis Medical Center–West*, 323 NLRB 1046, 1047 (1997); *Northcrest Nursing Home*, 313 NLRB 491, 496 fn. 26 (1993). The Board has cautioned that the supervisory exemption should not be construed too broadly because the inevitable consequence of such a construction would be to remove individuals from the protections of the Act. *Providence Hospital*, supra, 320 NLRB at 725; *Northcrest Nursing Home*, supra, 313 NLRB at 491. Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, supra, 295 NLRB at 490. The legislative history of Section 2(11) makes it clear that Congress intended to distinguish between employees performing minor supervisory duties and supervisors vested with genuine management prerogatives, and did not intend to remove individuals in the former category from the protections of the Act. S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1947), reprinted in 1 Legis. Hist. 407, 410 (LMRA 1947). The legislative history also shows that Congress considered true supervisors to be different from lead employees or straw bosses who merely provide routine direction to other employees as a result of superior training or experience. *Id.*, reprinted at 1 Legis. Hist. at 410 (LMRA 1947). *Providence Hospital*, supra, 320 NLRB at 725; *Ten Broeck Commons*, 320 NLRB 806, 809 (1996). An individual will not be found to be a supervisor unless he or she has a “kinship to management.” *Adco Electric*, 307 NLRB 1113 fn. 3 (1992), enfd. 6 F.3d 1110, 144 LRRM 2763 (5th Cir. 1993); *NLRB v. Security Guard Services*, supra, 66 LRRM at 2250. Further, “supervisory direction” of other employees must be distinguished from direction incidental to an individual’s technical training and expertise, and technical employees will not be found to be supervisors merely because they direct and monitor support personnel in the performance of specific job functions related to the discharge of their duties. *Robert Greenspan, DDS*, supra, 318 NLRB at 76; *New York University*, 221 NLRB 1148, 1156 (1975).

Based on the foregoing, I find that the Employer has not carried its burden of establishing that Program Managers are supervisors within the meaning of Section 2(11)

of the Act. There is no record evidence to establish that Program Managers hire, suspend, lay off, recall, promote, or reward Resident Advisors or any other employees. The evidence concerning the authority of Program Managers to effectively recommend the discharge (or hire) of Resident Advisors after their three-day trial period is inconclusive. There was no evidence of a specific instance of any employee being terminated or refused a job as result of a Program Manager's appraisal of their three-day trial period performance. As to a Resident Advisor's probationary period, while Program Managers have effectively recommended that a new employee's probationary period be extended, there is no evidence that this has had any impact on their continued employment. In these circumstances, I find that the record does not show the Program Managers have the authority claimed by the Employer. *Mount Sinai Hospital*, 325 NLRB No. 214 (1998); *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 392 (1989), *enfd.* 933 F.2d 626, 137 LRRM 2393 (8th Cir. 1991); *Bowne of Houston*, 280 NLRB 1222, 1223 (1986); *Oregon State Employees Assn.*, 242 NLRB 976, 979 (1979).

A similar conclusion is warranted with respect to the role of Program Managers in the issuance of discipline. Program Managers can issue general counselings or verbal warnings to Resident Advisors, though the Employer's records show only one verbal warning in the two years prior to the hearing. The record does not, in any event, establish any consequence that necessarily flows to the employee from the issuance of either a general counseling or a verbal warning. It therefore cannot be said that the Program Manager's role in the disciplinary process, in this respect, is anything more than reportorial. *Vencor Hospital-Los Angeles*, 328 NLRB No. 167, slip op. at 4 (1999); *Green Acres Country Care Center*, 327 NLRB No. 57 (1999); *Ryder Truck Rental, Inc.*, 326 NLRB No. 149 (1998).⁸ The Program Managers have no authority on their own to issue written warnings or other forms of discipline. Although Program Managers have recommended such discipline, the record establishes instances when the Employer has either not adopted or ignored the Program Manager's recommendations. There is no evidence that any such recommendations have been followed. Accordingly, I find that the Employer has not met its burden of establishing that Program Managers have authority to impose or effectively recommend discipline in the exercise of independent judgment within the meaning of Section 2(11) of the Act. *Ten Broeck Commons*, *supra*, 320 NLRB at 809; *Northcrest Nursing Home*, *supra*, 313 NLRB at 497 (1993); *Hydro Conduit Corp.*, 254 NLRB 433 (1981); *Florida Steel Corp.*, 220 NLRB 225, 227 (1975), *enfd.* in relevant part 544 F.2d 896, 94 LRRM 2237 (5th Cir. 1977).

Program Managers have no authority to transfer Resident Advisors involuntarily. Indeed, the record cites instances where Program Managers requested that employees be transferred and upper management turned them down. The Program Managers do have authority, however, to sign off on forms submitted by Resident Advisors who are seeking voluntary transfers. Although the record details only one instance when this has actually

⁸ The Employer's use of verbal warnings is distinguishable from the warnings at issue in *NLRB v. Attleboro Nursing Center*, 176 F.3d 154, 161 LRRM 2193 (3d Cir. 1999). Here, unlike in *Attleboro*, the warnings are not an integral part of the progressive discipline system as they do not in themselves have a defined impact on future discipline.

occurred, it was asserted that transfers are generally effectuated if both Program Managers involved sign the form. Even this claim was, however, tempered by the concession that a Program Director would intervene if the transfer would leave a home understaffed. As the authority generally of Program Managers to transfer employees only involves voluntary transfers that are subject to review, this authority does not involve the exercise of independent judgement indicative of supervisory status. *Northern Montana Health Care*, 324 NLRB 752, 754 (1997); *Providence Hospital*, supra, 320 NLRB at 732; *Ten Broeck Commons*, supra, 320 NLRB at 813. Moreover, with evidence of only one voluntary transfer in the record, the Program Manager's exercise of this authority is, at most, sporadic, which is insufficient to transform an employee into a supervisor. See, e.g., *Robert Greenspan, DDS*, supra, 318 NLRB 70.

Although Program Managers perform scheduling functions, the evidence falls short of demonstrating that they exercise independent judgement in these aspects of their duties. The Program Manager prepares a schedule that sets forth when employees will work and submits it to the Project Director who shares scheduling responsibility and may change the schedule. The schedule may be incomplete and filled by consensus of the home. Employees themselves may change the schedule by switching with each other. Program Managers cannot compel any Resident Advisor to work additional hours and, where there are no volunteers to cover unexpected absences or other problems, the Program Manager turns to his or her Project Director, who has authority to compel employees from another home to cover a shift. To the extent that scheduling the mandated staff coverage in this and other circumstance results in overtime it, again, does not involve the exercise of independent judgement. *Green Acres Country Care Center*, supra; 327 NLRB No. 57; *Providence Hospital*, supra, 320 NLRB at 727.

As to the Resident Advisors' daily tasks, the Employer's policies, government regulation, the residents' Individual Program Plans and common sense largely dictate these. The Program Managers will relay information to the rest of the staff and will remind them of their obligations. The record discloses only very minor instances in which Program Managers have directed Resident Advisors to take certain actions, such as to conduct a fire drill or to stop buying a particularly expensive food item for the home. As to Resident Advisors' core responsibilities — caring for residents and meeting their needs — Resident Advisors know how to perform these tasks and Program Managers do not need to provide day to day direction. This is routine, rather than responsible, direction within the meaning of Section 2(11) of the Act. *Providence Hospital*, supra, 320 NLRB at 725; *Ten Broeck Commons*, supra, 320 NLRB at 809. Although group homes, for the most part, operate on a 7-day, 24-hours-per-day basis, most of the time Program Managers simply are not physically present in the home to oversee the work of Resident Advisors. In the event a truly non-routine issue arises, Resident Advisors, as well as Program Managers, are required to contact the Project Director or the on-call supervisor. Accordingly, Program Managers do not responsibly direct Resident Advisors. *Providence Hospital*, supra, 320 NLRB at 725; *Hexacomb Corp.*, 313 NLRB 983, 984 (1994).

The Employer also failed to meet its burden of establishing that Program Managers exercise Section 2(11) supervisory authority in preparing performance evaluations for the Resident Advisors in their homes. The evaluations are not tied to employee wage increases, nor do they directly affect any employee terms or conditions of employment. Although performance evaluations may be reviewed by Project Directors in considering whether to promote residents advisors to the position of Program Manager, this is, at most, only one factor that is considered. The lack of a direct connection between annual evaluations and promotion to the position of Program Manager is highlighted by the fact that not all promoted Resident Advisors had even received recent annual evaluations. In the absence of evidence demonstrating the specific impact of annual evaluations on promotions, the Employer's unsubstantiated assertions concerning Program Managers' preparation of performance evaluations are insufficient to establish supervisory authority. *Ahrens Aircraft*, 259 NLRB 839, 843 (1981), *enfd.* 703 F.2d 23, 112 LRRM 3298, (1st Cir. 1983); *Beth Israel Medical Center*, 229 NLRB 295 (1977); see *Vencor Hospital—Los Angeles*, *supra*, 327 NLRB No. 167, slip op. at 4–5. Contrast *Cape Cod Nursing Home*, 329 NLRB No. 28 (1999).

Finally, the Employer claims that the Program Managers' role in adjusting grievances establishes their supervisory status. The only evidence on this point is Operations Director Walker's testimony that Program Managers are to "handle" disputes or grievances between Resident Advisors when they cannot resolve problems between themselves. As written grievances go directly to the Operations Director or his designee, and there is no evidence as to how Program Managers "handle" disputes or grievances, the extent of their authority to adjust or "handle" grievances is not clear. Nor is it clear what types of disputes Program Managers have handled. The Board has held that authority to resolve minor disputes is insufficient to establish supervisory status. *Riverchase Health Care Center*, 304 NLRB 861, 865 (1991). On this record, the Employer has not carried its burden of establishing that Program Managers adjust grievances and exercise independent judgment in doing so.⁹

Based on the above, I find that Program Managers are not supervisors within the meaning of Section 2(11) of the Act.

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer at its group homes in its Pennsylvania Suburban Residential Division of Adult Services, including Program Managers, Assistant Program Manager and Residential Advisors, excluding all other employees,

⁹ In *NLRB v. Attleboro Nursing Center*, 176 F.3d 154, 161 LRRM 2193 (3d Cir. 1999), the Court categorically found that the nurses at issue there had the authority to adjust grievances. Here, it is not clear that the Program Managers' handling of grievances involves any authority beyond that of a mediator.

maintenance employees, vocational instructors, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,¹⁰ subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**PENNSYLVANIA SOCIAL SERVICES UNION,
LOCAL 668 OF SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO-CLC**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within **7** days of the date of this Decision **3** copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the

¹⁰ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **December 8, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **December 15, 1999**.

Dated December 1, 1999

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

177-8580-8050

JMD: H:\R04COM\Decision Writing\Supervisor\D0419759.doc